



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2014-0916; FRL-9934-83-Region 8]

**Approval and Promulgation of Air Quality Implementation Plans;
South Dakota; Revisions to South Dakota Administrative Code**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of South Dakota on July 29, 2013. This SIP submission revises the Administrative Rules of South Dakota (ARSD) Article 74:36 - Air Pollution Control Program. These revisions include renumbering, revisions to the date of incorporation by reference of the federal regulations referenced throughout ARSD Article 74:36, and removal of obsolete language regarding variance provisions and clean units. EPA is also clarifying a final rule issued on January 29, 2015 pertaining to South Dakota's infrastructure SIP. This action is being taken in accordance with section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2014-0916. All documents in the docket are listed on the

<http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202-1129.

EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

South Dakota's July 29, 2013 submittal covers the following rule changes: (1) Removal of obsolete language regarding variance provisions and clean units, and renumbering to reflect the deletions; and (2) Revisions to the date of federal regulations referenced throughout ARSD Article 74:36 to July 1, 2012. A cross-walk table that identifies EPA's action on South Dakota's revisions is included in the docket for this rulemaking.

South Dakota's July 29, 2013 submittal also requests EPA approval of rule revisions for provisions that are not required to be included in SIPs under section 110 of the CAA, most notably additions to the State's New Source Performance Standards, National Emissions

Standards for Hazardous Air Pollutants and Title V permitting. These revisions, on which EPA is not taking action, are outlined in the cross-walk table located in the docket for this rulemaking.

II. What Action is EPA Taking?

EPA is finalizing action on South Dakota's July 29, 2013 submittal as outlined in Section III. of the proposal published on July 14, 2015, with one exception; EPA's proposed approval of South Dakota's updates to 74:36:05, "Operating Permits for Part 70 Sources," as part of its July 14, 2015 action (80 FR 40953). EPA published a notice of correction of the proposal on August 24, 2015 (80 FR 51152), because CAA Title V requirements are not subject to Section 110 of the Clean Air Act and are thus not required to be incorporated into a SIP. Therefore, EPA is not taking any action on South Dakota's updates to 74:36:05.

III. Clarification of January 29, 2015 Final Action

Under CAA sections 110(a)(1) and (2), states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). On January 29, 2015, EPA took final action on the infrastructure submittals which addressed several different NAAQS from the State of South Dakota (80 FR 4799). As part of the January 29, 2015 action, EPA approved South Dakota's 1997 PM_{2.5} NAAQS interstate transport infrastructure sub-element (CAA section 110(a)(2)(D)(i)(II)). However, EPA had already approved this sub-element in a final rulemaking on May 8, 2008 (73 FR 26019, effective July 7, 2008). Therefore, in this action EPA is clarifying that no action was required on this sub-element for this NAAQS in the January 29, 2015 approval of CAA section 110(a)(2)(D)(i)(II) for the 1997 PM_{2.5} NAAQS and the effective date of approval remains July 7, 2008.

IV. Response to Comments

EPA received one comment on the July 14, 2015 proposal with respect to air quality measurements. EPA acknowledges this comment but does not consider the comment to be relevant to the proposed action.

V. Summary of Action

In this rulemaking, EPA is approving most remaining portions of South Dakota's July 29, 2013 submittal as outlined in the crosswalk table located in the docket for this action. EPA is not taking action on certain portions of this submittal as described in the proposed rulemaking and the notice of correction to the proposal. Finally, EPA is also clarifying no action was required in the January 29, 2015 final action (80 FR 4799) regarding the effective date of approval for South Dakota's SIP regarding CAA section 110(a)(2)(D)(i)(II) for the 1997 PM_{2.5} NAAQS as EPA had already approved this sub-element in a prior rulemaking.

VI. Incorporation by Reference

In this rulemaking, EPA is including final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is incorporating by reference the rules in ARSD Article 74:36 submitted by South Dakota for action which are identified within this notice of rulemaking. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this rule's preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that

complies with the provisions of the Act and applicable federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact in a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action

must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: September 9, 2015.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart QQ—South Dakota

2. In §52.2170, the table in paragraph (c)(1) is amended by:

- a. Revising entries for “74:36:01:01”; “74:36:02:02”, “74:36:02:03”, “74:36:02:04”, “74:36:02:05”; and “74:36:04:04”;
- b. Adding an entry for “74:36:04:05” in numerical order;
- c. Revising entries for “74:36:04:12” and “74:36:04:13”;
- d. Adding an entry for “74:36:04:14” in numerical order;
- e. Revising entries for “74:36:04:15”; “74:36:11:01”; and “74:36:12:01”;
- f. Adding an entry for “74:36:12:02” in numerical order; and
- g. Revising entries for “74:36:12:03”; “74:36:13:02”, “74:36:13:03”, “74:36:13:04”, “74:36:13:06”, “74:36:13:07”, “74:36:13:08”; “74:36:18:04”, “74:36:18:05”, “74:36:18:06”, “74:36:18:10”, “74:36:18:11”, “74:36:18:12”; “74:36:20:05”, “74:36:20:11”, “74:36:20:13”, “74:36:20:14”, “74:36:20:15”; “74:36:21:02”, “74:36:21:04”, “74:36:21:05”, and “74:36:21:09”.

The revisions and additions read as follows:

§52.2170 Identification of plan.

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(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date and citation ¹	Explanations
* * * * *				
74:36:01 Definitions				
74:36:01:01	Definitions	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				
74:36:02 Ambient Air Quality				
74:36:02:02	Ambient air quality standards	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:02:03	Methods of sampling and analysis	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:02:04	Air quality monitoring network	6/25/2013	[insert date of publication in the Federal Register],	

			[insert Federal Register citation]	
74:36:02:05	Air quality monitoring requirements	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				
74:36:04 Operating Permits for Minor Sources				
* * * * *				
74:36:04:04	Standard for issuance of a minor source operating permit	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:04:05	Time period for operating permits and renewals	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				
74:36:04:12	Public participation in permitting process	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				
74:36:04:13	Final permit decision -- Notice to interested persons	6/25/2013	[insert date of publication in the Federal	

			<u>Register</u>], <u>[insert Federal Register citation]</u>	
74:36:04:14	Right to petition for contested case hearing	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	
74:36:04:15	Contents of operating permit	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	
* * * * *				
74:36:11 Performance Testing				
74:36:11:01	Stack performance testing or other testing methods	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	
* * * * *				
74:36:12 Control of Visible Emissions				
74:36:12:01	Restrictions on visible emissions	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	
74:36:12:02	Exceptions to restrictions	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	Except for 74:36:12:02(3)

			<u>[insert Federal Register citation]</u>	
74:36:12:03	Exceptions granted to alfalfa pelletizers or dehydrators	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	
* * * * *				
74:36:13 Continuous Emission Monitoring Systems				
74:36:13:02	Minimum performance specifications for all continuous emission monitoring systems	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	
74:36:13:03	Reporting requirements	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	
74:36:13:04	Notice to department of exceedance	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	
74:36:13:06	Compliance certification	6/25/2013	<u>[insert date of publication in the Federal Register]</u> , <u>[insert Federal Register citation]</u>	

74:36:13:07	Credible evidence	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:13:08	Compliance assurance monitoring	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				
74:36:18 Regulations for State Facilities in the Rapid City Area				
* * * * *				
74:36:18:04	Time period for permits and renewals	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:18:05	Required contents of a complete application for a permit	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:18:06	Contents of permit	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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74:36:18:10	Visible emission limit for construction and continuous operation activities	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:18:11	Exception to visible emission limit	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:18:12	Notice of operating noncompliance -- Contents	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				
74:36:20 Construction Permits for New Sources or Modifications				
* * * * *				
74:36:20:05	Standard for issuance of construction permit	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				
74:36:20:11	Public participation in permitting process	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	

* * * * *				
74:36:20:13	Final permit decision -- Notice to interested persons	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:20:14	Right to petition for contested case hearing	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
74:36:20:15	Contents of construction permit	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				
74:36:21 Regional Haze Program				
* * * * *				
74:36:21:02	Definitions	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	
* * * * *				
74:36:21:04	Visibility impact analysis	6/25/2013	[insert date of publication in the Federal Register], [insert Federal Register citation]	

			<u>citation]</u>	
74:36:21:05	BART determination	6/25/2013	<u>[insert date of publication in the Federal Register],</u> <u>[insert Federal Register citation]</u>	
* * * *	* * *			
74:36:21:09	Monitoring, recordkeeping, and reporting	6/25/2013	<u>[insert date of publication in the Federal Register],</u> <u>[insert Federal Register citation]</u>	
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¹In order to determine the EPA effective date for a specific provision listed in this table, consult the FEDERAL REGISTER notice cited in this column for the particular provision.

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[FR Doc. 2015-24857 Filed: 10/1/2015 08:45 am; Publication Date: 10/2/2015]